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IN THE

Supreme Court of the United States

October Term, A. D. 1958

No. 200

PEOPLE OF THE STATE OF ILLINOIS, ex rel. FRANK KEENAN,

Petitioner,

vs.

JOHN F. McGUANE, EDWARD J. BARRETT, County Clerk of Cook County; JOSEPH D. LOHMAN, Sheriff of Cook County; HERBERT C. PASCHEN, County Treasurer of Cook County; DANIEL RYAN, President; and JAMES F. ASHENDEN, FRANK BOBRYTZKE, CHARLES F. CHAPLIN, ELIZABETH A. CONKEY, JERRY DOLEZAL, JOHN J. DUFFY, ARTHUR X. ELROD, WILLIAM N. ERICKSON, FRED A. FULLE, CHRIST A. JENSEN, JOHN MACKLER, JR., CLAYTON F. SMITH, EDWARD M. SNEED, JOHN J. TOUHY, Members of the Board of Commissioners of Cook County,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

People of the State of Illinois, ex rel. Frank Keenan prays that a writ of certiorari issue to review the final judgment of the Supreme Court of Illinois, entered April 21, 1958 (R. 10-24). A timely petition for rehearing was filed and denied, the opinion of the court being thereupon modified, on May 23, 1958 (R. 27).

OPINION BELOW.

The opinion of the Supreme Court of Illinois is included in the Transcript of the Record (R. 11-23); is set forth in full in Appendix A hereto, pp. 19-33; and is officially reported in 13 Ill. 2d 520, and 150 N. E. 2d 168.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

Petitioner seeks a review of the final judgment of the Supreme Court of Illinois (R. 24) which denied petitioner's application for the original writ of mandamus directing the respondents to restore him to the office of Cook County Assessor, from which he was wrongfully and forcibly removed.

The complaint alleged that relator had been convicted in the United States District Court at Danville, Illinois, of conspiracy to evade and of evasion of personal and corporate income taxes for the years 1950, 1951 and 1952, in violation of Section 371 of Title 18 and Section 145(b) of Title 26 of the U. S. Code, and sentenced to serve two years in the penitentiary and pay a fine in the sum of $56,000; that he was at the time the duly elected Assessor of Cook County, Illinois, and had been in office for three years of a four year term; that he immediately appealed the said conviction to the United States Court of Appeals for the 7th Circuit; that promptly after imposition of sentence the Board of Cook County Commissioners, on the advice of the State's Attorney of Cook County, declared that as a result of said conviction he had forfeited his right to continue to hold office, said conviction constituting an infamous crime, and said Board thereupon elected respondent, John F. McGuane, successor to the office of Cook County Assessor. The relator protested to said Board

that the judgment of conviction was not final due to the pendency of his appeal and furthermore that the conviction under the federal law was not encompassed within the infamous crimes defined in Section 7 of Division II of the Criminal Code (Ill. Rev. Stat. 1957, Ch. 38, Par. 587) and therefore could not constitute a basis to disqualify him from continuing as such Assessor. Notwithstanding his protest the Board took the action aforesaid and the relator was removed from the possession of his office by the Sheriff of Cook County, who, at the direction of the said State's Attorney, threatened to use physical force to oust him unless he went peacefully; yielding to this threat of physical force the relator vacated the office and the respondent McGuane thereafter took possession thereof.

The Supreme Court of Illinois refused to award the writ of mandamus to reinstate relator, holding that the pendency of the appeal did not operate to stay the finality of the judgment of conviction and holding also that notwithstanding the statute, the relator was guilty of an infamous crime as known at common law and was therefore disqualified from continuing in office.

The law that had existed in Illinois heretofore had been that the pendency of an appeal prevented a judgment of conviction from becoming effective until the appellate processes had been exhausted; and the law of Illinois held, prior to that time, that conviction of a crime under federal law did not operate to disqualify one from taking or continuing to occupy office in the State of Illinois.

It is our theory that this action of the court constitutes an *ex post facto* imposition of a penalty for a crime, which penalty did not exist in the State of Illinois at the time of relator's conviction, and therefore violates Article 1 Section 9 of the United States Constitution. The action of the Illinois Supreme Court also violates Article 6 of the Con

stitution of the United States which provides that the judges of every state shall be bound by the Constitution of the United States; the *ex post facto* nature of the court's decision is a breach of said Article 6. The action of the Supreme Court of Illinois also violates due process of law as guaranteed by the 5th Amendment and the 14th Amendment of the United States Constitution to the extent that the relator has suffered by the court's decision a penalty not known or contemplated by the laws of the State of Illinois at the time he was tried and convicted.

Relator also is of the opinion that the decision of the Supreme Court of Illinois is contrary to the common law upon which it relies for its decision; that the legislative determination of what constitutes infamous crimes is one which under the Constitution the court has no power to make. In so doing the Supreme Court of Illinois has encroached on the legislative function in violation of the constitutional separation of powers imposed by Article 3 of the Constitution of 1870 of the State of Illinois and of the 14th Amendment to the United States Constitution which provides that the rights of citizens of the United States shall not be abridged by any state nor shall any state deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws. It is also relator's theory that the action of the Supreme Court of Illinois creates illegal classifications in the laws of the State of Illinois and should not be permitted to stand.

This was an original petition for a writ of mandamus. The constitutional questions affecting the federal questions were raised in the petition for rehearing (R. 26).

JURISDICTIONAL STATEMENT.

Subdivision (3) of Section 1257 of Title 28, Judiciary and Judicial Procedure, is relied upon as giving jurisdiction to the Supreme Court of the United States to review the final judgment of the Supreme Court of Illinois in this cause. It reads as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * *
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States. June 25, 1948, c. 646, 62 Stat. 929." (U.S.,C.A., Title 28, Sec. 1257 (3).)

It appears clearly from the opinion of the Supreme Court of Illinois that its judgment was based on the view that conviction of a federal crime of conspiracy to evade income taxes is a felony and an infamous crime, and that this has formed the basis for the determination of the court that it is, therefore, an infamous crime under the Constitution of the State of Illinois, Article 4, Section 4, notwithstanding that the legislature has seen fit to define infamous crimes and to exclude from that category of infamous crimes, violations of federal law or misdemeanors such as these crimes would be under Illinois law; that petitioner's right as a citizen to hold office is directly involved.

QUESTIONS PRESENTED FOR REVIEW.

(1) Whether the ouster of an elected public official by force without a trial or a judicial hearing, violates his rights to due process of law and the equal protection of the laws under the 5th and 14th Amendments to the Constitution of the United States.

(2) Whether the elected public official is deprived of the equal protection of the laws and due process when he is denied restoration to office by the Supreme Court of Illinois which refused to follow the statute of the state and the decision law of the state.

(3) Whether the decision of the Supreme Court of Illinois estabishing one rule for disqualification of elected administrative officials and a different rule as to judicial officers is not violative of the equal protection of the laws guaranteed by the 5th and 14th Amendments.

(4) Whether the Illinois Supreme Court's decision is an *ex post facto* law in violation of Article 1, Section 9 of the U. S. Constitution in that it has, for the first time, determined that disqualification to hold public office in Illinois results from conviction of federal income tax violation.

(5) Whether such an *ex post facto* increase in the punishment resulting from conviction for income tax fraud violates due process of law as provided by the 5th and 14th Amendments, to the extent that the petitioner has been subjected to a penalty not contemplated by the laws of the State of Illinois at the time of his conviction under federal laws.

(6) Whether the judges of the Supreme Court of Illinois have violated Article 6 of the U. S. Constitution which subjects judges in every state to the Constitution of the United States in that they have set aside the state's legis-

laion and have judicially legislated to make federal income tax conviction an infamous crime in Illinois, contrary to the expressed intention of the state's legislature manifested in the state's statute.

(7) Whether the Illinois Supreme Court has deprived petitioner of the equal protection of the laws in providing that a judgment is final, as to elected public officials, when the trial court enters judgment, while in all other cases the judgment is not final until the appellate processes are exhausted.

CONSTITUTIONS AND STATUTES INVOLVED.

The determination of the questions involved depends upon the 5th and 14th Amendments, Article 1, Section 9 and Article 6 of the Constitution of the United States; on Article III, Article IV, Section 4 and Article VI, Section 30 of the Constitution of the State of Illinois, and on Chapter 38, paragraphs 587, 585-6; Chapter 46, paragraph 25-2 and other Illinois statutes, all of which appear in Appendix B, hereto attached pp. 33-36.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

I.

The decision of the court amounts to an ex post facto increase of the penalty for income tax evasion because, under the law of Illinois, income tax evasion is at most a misdemeanor, yet the Supreme Court of Illinois has treated it as a felony and has declared it to be an infamous crime warranting disqualification of the relator from continuing to hold the office to which he was elected. Such a holding violates the ex post facto prohibition in Article 1, Section 9 of the United States Constitution, and the 5th and 14th Amendments.

The law in Illinois prior to the decision in the instant case was that conviction of a crime under federal laws was not a disqualification from holding public office in Illinois, *Hildreth* v. *Heath*, 1 Ill. App. 82; *People ex rel.* v. *Bartlett*, 169 Ill. App. 304. Infamous crimes in Illinois were held to be such crimes as had been designated by the legislature of the State of Illinois, *People* v. *Kirkpatrick*, 413 Ill. 595, 110 N. E. 2d 519. The law had been established that it was a legislative prerogative, not a judicial one to declare the circumstances under which a public office became vacant. In *People ex rel. v.* v. *Dreher*, 302 Ill. 50, 134 N. E. 22, the Supreme Court of Illinois had declared (p. 24):

> "There is no prohibition or limitation in the constitution of this State on the power of the legislature to prescribe the means by which officers, other than judicial officers, below the grade of State officers may be removed from office. That power, therefore, rests entirely in the hands of the legislature."

The decision in the instant case changes all this. The Supreme Court of Illinois has relied upon Article IV of

Section 4 of the Constitution of the State of Illinois, which provides as follows:

> "No person who has been, or hereafter shall be, convicted of bribery, perjury, or other infamous crime, nor any person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the general assembly, or to any office of profit or trust in this state."

The infamous crimes therein referred to have been defined by the general assembly of the State of Illinois in the Criminal Code (Chap. 38, Ill. Rev. Stat. 1957, Par. 587) as follows:

> "Every person convicted of the crime of murder, rape, kidnapping, willful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sale of narcotic drugs, sodomy, or other crime against nature, incest, forgery, counterfeiting, bigamy, or larceny, if the punishment for said larceny is by imprisonment in the penitentiary, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust or profit, of voting at any election, or serving as a juror, unless he or she is again restored to such rights by the terms of a pardon for the offense or otherwise according to the law."

This enumeration of infamous crimes excludes any crimes not therein enumerated. All of these crimes are felonies by the definition contained in the Criminal Code (Ill. Rev. Stat. 1957, Chap. 38, pars. 585-6). Conspiracy is a misdemeanor in Illinois (Chap. 38, pars. 138-140).

The decision in the instant case alters the law of Illinois by concluding that the conviction of relator in a federal court of violations of the income tax law render him guilty of an infamous crime warranting disqualification.

The court had also taken the position that at common law evasion of income tax or of taxes is a crime of moral

turpitude and therefore it is infamous under the Constitution of the State of Illinois. The court has ignored the fact that under the Illinois statute violations of tax laws are not made felonies but are only misdemeanors (Chap. 120, pars. 552, 806, Ill. Rev. Stat. 1957) and that even in the law of England as shown by Halsbury's Laws of England, Third Edition, Vol. 20, p. 50, in Paragraph 79 of the Income Tax Statute, it is stated:

> "It is a misdemeanor at common law for any subject to act in such a way as to defraud the Crown and the public," citing *R.* v. *Hudson*, (1956) 2 Q. B. 252, C.C.A., 1 All E. R. 814.

The further fact is ignored that this crime has been held not to involve moral turpitude. *Baker* v. *Miller*, 138 N. E. 2d 145; *U. S. ex rel. Robinson* v. *Day*, 51 F. 2d 1022; *U. S. ex rel. Giglio* v. *Neelly*, 208 F. 2d 337, 7 Circ.; *U. S.* v. *Carollo*, 30 F. Supp. 3.

The Supreme Court of Illinois has taken what is clearly a misdemeanor under the common law, the statute law of England today, and under the laws of the State of Illinois, and has placed it in a category of felonies even though not so placed by the legislature, and the court has by so doing arrived at the conclusion that the conviction of an infamous crime disqualifies relator from holding his office. By this strained reasoning, the court has concluded that the relator is not entitled to a writ of mandamus to aid him in the restoration to his office, notwithstanding that in many other cases it had held the writ applicable.

The Supreme Court of Illinois has violated the separation of powers not merely by legislating judicially where the legislature has not sought to make income tax violations an infamous crime in Illinois, but from the standpoint of its violation of the Federal Constitution it is clear that the Supreme Court of Illinois in this case has added a penalty

to the income tax conviction of relator which did not therefore exist. At the time he was tried and convicted, the law of Illinois, as we have hereinabove indicated, did not make income tax violations an infamous crime in Illinois, in fact it could not have done so. But the Illinois Supreme Court has now *ex post facto* added a penalty which did not exist. *Viereck* v. *U. S.*, 63 S. Ct. 516, 318 U. S. 236; 87 L. Ed. 734, 741; *In re Medley*, 10 S. Ct. 384, 33 L. Ed. 835.

While it is true that as a general proposition judicial acts have not been held to be *ex post facto legislation* yet in the instant case we respectfully urge that the court consider that until the Supreme Court of Illinois changed the law as we have indicated it, the law of the State of Illinois did not impose the penalty of disqualification from public office, in fact, as we have shown, the law held that conviction of a federal law did not constitute a disqualification. This then is not a mere case of judicial action, but this is a case of judicial legislation and on this theory we respectfully urge that this court review the action of the Supreme Court of Illinois and strike it down as being *ex post facto* in its nature.

In *Ross* v. *Oregon*, 227 U. S. 150, this court pointed out (p. 162) that this court would reach every form in which the legislative power of a state is exerted whether it be constitution, a constitutional amendment, an enactment of the legislature, or any form if it violated the federal constitution.

In *U. S.* v. *Evans*, 68 S. Ct. 634, 333 U. S. 483, 92 L. Ed. 823, this court held that the fixing of a penalty is a legislative function. In the instant case the penalty has not been fixed by the legislature of the State of Illinois but has been fixed by the Supreme Court of Illinois and in so doing the court must be subject to the same rules of the United States Constitution to which a legislature would be subject. The

court should not be able to escape compliance with the federal constitution under any theory that courts are not subject to the *ex post facto* prohibition when the fact is that in this case the Supreme Court of Illinois has itself been the legislative body.

In *Shelley* v. *Kraemer*, 334 U. S. 1, 92 L. Ed. 1161, 68 S. Ct. 836, this Court held that the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment. This Court said:

> "It has been recognized that the action of state courts in enforcing a substantive common-law rule formulated by those courts, may result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process."

The Court further said:

> "The short of the matter is that from the time of the adoption of the Fourteenth Amendment until the present, it has been the consistent ruling of this Court that the action of the States to which the Amendment has reference, includes action of state courts and state judicial officials. Although, in construing the terms of the Fourteenth Amendment, differences have from time to time been expressed as to whether particular types of state action may be said to offend the Amendment's prohibitory provisions, it has never been suggested that state court action is immunized from the operation of those provisions simply because the act is that of the judicial branch of the state government."

The Supreme Court of Illinois in arriving at its conclusion that at common law relator's crime would have been infamous, ignored the fact that the legislature of the State of Illinois has stated under what circumstances the common law of Illinois should be applicable. In Chapter 28, Ill. Rev. Stat. 1957, the legislature provided that the common

law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British parliament made in aid of, and to supply the defects of the common law, prior to 1606, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

The court itself, in *Kaufman v. Murphy*, 387 Ill. 436, 56 N. E. 2d 839, held (p. 843) that:

> "The power of the General Assembly to broaden or restrict common-law concepts is generally recognized." Citing *NYCR Co. v. White*, 243 U. S. 188, 37 S. Ct. 247, 61 L. Ed. 667.

In *People v. Barrett*, 382 Ill. 321, 46 N. E. 2d 951, the court said (p. 964):

> "The common law is as much a part of the law of this State, where it has not been expressly abrogated by statute, as the statutes themselves."

And the court also said (p. 963):

> "When the legislature creates an office, either public or corporate, such office is wholly within the power of the legislature creating it and it may prescribe and limit the powers and duties of the incumbent of such office."

In *People v. Corder*, 306 Ill. 264, 137 N. E. 845, the court pointed out that in Illinois there is no such crime as a common law felony, saying (p. 848):

> "There is no such crime as a common law felony in Illinois. All felonies in Illinois are defined by and required to be prosecuted under the Criminal Code, and every indictment for felony in Illinois is required to be construed in accordance with this Code."

Every law which makes criminal an act which was innocent when done, or inflicts a greater punishment than the law annexed to the crime when committed, is an *ex post facto* law within the prohibition of the constitution. *Calder*

v. *Bull*, 3 Dall. 386, 390; *Ex parte Garland*, 4 Wall. 333, 337; *Burgess* v. *Salmon*, 97 U. S. 381, 384.

The new punishment which the Supreme Court of Illinois imposed on relator is as much an *ex post facto* law as if the legislature had sought by statute to provide for such added penalty and is equally a violation of the prohibition applicable thereto.

II.

The court's holding that the pending appeal does not stay the finality of the conviction ignores the established Illinois law in such a situation and creates a new classification solely in cases affecting public executive officers. In so doing it creates an illegal classification and thereby deprives the relator of due process of law as guaranteed by the 5th Amendment and denies him the equal protection of the law contrary to the 14th Amendment.

The opinion recognizes that under Illinois law the pendency of an appeal has uniformly been held to stay the finality of a conviction. Only as to public officers is the rule changed by this opinion. The Court has overlooked that the result of this holding is the creation of two classes: as to public officers the appeal does not stay finality, as to all others it does. The creation of this new class is not based on any real distinction. Indeed, it is hard to see why for instance, a lawyer cannot be disbarred or suspended until after his appeal is disposed of, while a public officer is summarily removable upon the entry of judgment in the trial court. The Court has overlooked the fact that a lawyer must be, if anything, of a finer moral character and must pass a character fitness test before admission; a public officer need pass no such test, yet the latter is held

to a stricter rule of conduct after induction than the former.

We suggest that the Court has violated the Constitution in arriving at the conclusion that conviction in the trial court was intended to alter the entire theory of finality of judgments. This conclusion seems to be contrary to the intent of the framers of the constitution. In Article VI, Section 30 of the Constitution, removal of judicial officers is to be made upon "final conviction." Can it be that executive officers are to be removed upon conviction in the trial court, but judicial officers be entitled to the benefit of their office until their appeal is disposed of? It seems that "final conviction" in the Constitution is now meant to mean conviction in the trial court when it affects public office—executive or legislative, but remains final conviction as ultimately decided after the exhaustion of the appellate processes when it affects all others than public officers, or judicial officers.

The precise point was recognized by the Supreme Court of Illinois as having been passed upon by the Supreme Court of Colorado in *People of the State of Colorado* v. *Enlow, et al.*, 310 P. 2d 539. There both points involved here were squarely decided contrary to the decision reached by the Supreme Court of Illinois. It was there held that the crime of income tax evasion was not an infamous crime under the Colorado statute, practically identical with Paragraph 587 of the Illinois Criminal Code, and it was held that the conviction was not final while the appeal was pending and not finally disposed of. There the appeal had even been decided against the sheriff by the United States Court of Appeals but the time for filing a petition for rehearing had not expired. The Colorado Supreme Court held that so long as the appellate process had not been completely exhausted the conviction was not final. Also supporting

this view are *People ex rel. Atty. Gen.* v. *Laska,* 101 Colo. 221, 72 P. 2d 693; *People* v. *Gutterson,* 244 N. Y. 243, 155 N. E. 113; *Bird* v. *Gilbert,* 40 Kan. 469, 19 P. 924.

It is respectfully submitted that by refusing to follow the well established practice based upon the statutes of the State of Illinois and the authorities, (Section 74, Civil Practice Act, Ill. Rev. Stat. 1957, Ch. 110, Par. 74, *People* v. *Montana,* 380 Ill. 596, 44 N. E. 2d 569), the Supreme Court of Illinois has deprived the relator of due process of law according to the well established rules of law in the State of Illinois and by so doing has deprived him of the rights guaranteed him by the 14th Amendment to the Constitution of the United States.

III.

The forcible ouster of relator from the position to which he was elected and in which he served for three years of the four year term, without any judicial declaration of disqualification, is an outrageous affront to the dignity of the laws and constitutes a deprivation of due process of law. The refusal of the Supreme Court of Illinois to restore him to office until he was given an opportunity to be heard and the issues in this case tried violates due process of law as guaranteed by the Constitution.

The Supreme Court of Illinois has placed its stamp of approval on the forcible ouster of an elected official from the office which he occupied by refusing to aid him to be restored to his office. Upon a brand-new ground under Illinois law, the relator is now held to have been properly disqualified from holding office. The dignity of the law, and a respect for due process of law and the orderly processes of judicial administration requires that such high-

handed proceedings be denounced by the appropriate judicial authorities.

We respectfully submit that the manner in which relator was ousted is a travesty which should be denounced by this court as an example to those who might in the future seek to take the law into their own hands without waiting for judicial determination of the issues.

Conclusion.

It is respectfully submitted that the facts set forth in the foregoing petition and the legal problems therein discussed afford ample basis for the intervention by this Court in order to protect the rights of the relator in the premises.

Petitioner therefore respectfully prays that the writ of certiorari issue to the Supreme Court of the State of Illinois and upon review, the judgment be reversed.

Respectfully submitted,

L. Louis Karton,

Attorney for Petitioner

APPENDIX A.

OPINION OF THE SUPREME COURT OF ILLINOIS.

Mr. CHIEF JUSTICE DAVIS delivered the opinion of the court:

This case poses the questions of whether the petitioner's conviction, in the United States District Court, of conspiracy to evade and the evasion of personal and corporate income taxes for the years 1950, 1951 and 1952, in violation of sections 371 of title 18, and 145(b) of title 26 of the United States Code, and sentence to serve two years in the penitentiary and pay a fine in the sum of $56,000, constitutes conviction of an infamous crime in Illinois, which causes a vacancy in his office as Cook County assessor; and whether a pending appeal from such conviction operates to stay the effect of such vacancy.

The facts are not in dispute: Frank Keenan, the petitioner, was elected to the office of assessor at the general election on November 2, 1954, for a term of four years from the first Monday in December, 1954, and until his successor was duly elected and qualified. He qualified and performed the duties of assessor until February 4, 1958, when he was ousted under threat of force by the sheriff of Cook County on direction of its State's Attorney. On January 29, 1958, he was convicted of the income tax violations, sentenced, and fined, as above stated. On the same day, the State's Attorney of Cook County advised its board of commissioners, respondents, that petitioner had been convicted of an infamous crime which created a vacancy in the office of assessor and that it was their duty to appoint his successor. On January 30, 1958, petitioner perfected an appeal to the United States Court of Appeals, Seventh Circuit; advised the board that, by virtue of his appeal, there was no final judgment of conviction against him; that convictions under the Federal law are not encompassed within the infamous crimes defined in section 7 of division II of the Criminal Code, (Ill. Rev. Stat. 1957, chap. 38, par. 587,) and therefore could not constitute a basis to disqualify him from continuing as such assessor. The State's Attorney further counseled the

board that the office of assessor was vacant and that their failure to appoint a successor may place them in the position of violating the law. On February 4, 1958, over the protest of the petitioner, the board adopted resolutions declaring the office of assessor vacant and appointing respondent John F. McGuane to fill the vacancy. McGuane qualified for the office and was sworn in by the county clerk, also respondent. The petitioner, under threat of physical force from the sheriff of Cook County, likewise respondent, yielded up the office. Thereupon, pursuant to motion, we granted petitioner leave to file a petition for *mandamus*, wherein he sought such writ to compel the respondents to restore him to the office of Cook County assessor. Respondents filed answer.

The legal problems presented by the pleadings give rise to the above questions which are dispositive of this case. Initially our attention should be directed to the pertinent provisions of the Illinois constitution and statutes.

The Illinois constitution of 1870, article IV, section 4, provides: "No person who has been, or hereafter shall be, convicted of bribery, perjury, or other infamous crime, nor any person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the general assembly, or to any office of profit or trust in this state," and article VII, section 7, provides: "The general assembly shall pass laws excluding from the right of suffrage persons convicted of infamous crimes."

These constitutional provisions have been implemented by statutes, among which are the following:

Section 7 of division II of the Criminal Code, provides:

> "Every person convicted of the crime of murder, rape, kidnapping, willful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sale of narcotic drugs, sodomy, or other crime against nature, incest, forgery, counterfeiting, bigamy, or larceny, if the punishment for said larceny is by imprisonment in the penitentiary, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust or profit, of voting at any election, or serving as a juror, unless he or she is again restored

to such rights by the terms of a pardon for the offense or otherwise according to the law." Ill. Rev. Stat. 1957, chap. 38, par. 587.

Section 25—2 of the Election Code provides:

"Every elective office shall become vacant on the happening of either of the following events, before the expiration of the term of such office: * * *

"Fifth—His conviction of an infamous crime, * * *

"No elective office, except as herein otherwise provided, shall become vacant until the successor of the incumbent of such office has been appointed or elected, as the case may be, and qualified." Ill. Rev. Stat. 1957, chap. 46, par. 25-2.

Sections 25—3 and 25—11 of the Election Code, and section 6 of the Revenue Act of 1939, (Ill. Rev. Stat. 1957, chap. 120, par. 487,) authorize the county board, charged with the duty of filling a vacancy in the office of assessor, to determine whether or not facts exist occasioning such vacancy, and if so, to fill it by appointment until the next county election when a successor shall be elected for the unexpired term. Section 29—38 of the Election Code provides that every person convicted of any crime under any article or section of the Code, if the crime is punishable by imprisonment in the penitentiary, shall be deemed infamous and shall forever after be rendered incapable of holding any office of honor, trust or profit, or voting at any election, or serving as a juror unless he or she is again restored to rights of citizenship by the Governor or court according to law.

The constitution provides that no person convicted of bribery, perjury, or other infamous crime, shall be eligible to hold public office, and section 7 of division II of the Criminal Code enumerates certain specific crimes as infamous. However, section 25—2 of the Election Code is without such specification and thereunder every elective office becomes vacant upon conviction of the officer of an infamous crime.

Petitioner urges that he was not convicted of an infamous crime which effects a vacancy in office in Illinois, and cites section 4 of article IV of the constitution of 1870,

People v. *Kirkpatrick*, 413 Ill. 595, *People* v. *Montana*, 380 Ill. 596, *Hildreth* v. *Heath*, 1 Ill. App. 82, and section 74 or the Civil Practice Act, (Ill. Rev. Stat. 1957, chap. 110, par. 74,) in support of his contention. The constitutional provision cited, which was above quoted, does not identify the other infamous crimes included within the terms "or other infamous crime." It is self-executing and offers no support for petitioner's contention.

In the case of *People* v. *Kirkpatrick*, 413 Ill. 595, we held that conviction in a Federal court for violation of the Dyer Act cannot be shown in impeachment in a subsequent criminal prosecution in Illinois for burglary and larceny, since a violation of the Dyer Act is not an infamous crime within the terms of section 7 of division II of the Criminal Code, even though all felonies are infamous crimes under the Federal law. The problem in *Kirkpatrick* was one of evidence, controlled by the law of the forum, Illinois; and that decision had no bearing on the question of vacancy in office by operation of law and has application in the case at bar only by analogy. While the question before the court in *Kirkpatrick* is not now before us, we note that in 1869, section 235 of the Criminal Code, (Gross's Stat. p. 218,) declared that each person convicted of any of the crimes therein enumerated shall be deemed infamous and disqualified not only to hold office, vote and serve as a juror, but also to give testimony. (*Faunce* v. *People*, 51 Ill. 311.) Subsequently, this disability was removed by amendments to section 6 of division XIII of the Criminal Code which provided in part that "No person shall be disqualified as a witness in any criminal case or proceeding by reason of * * * his having been convicted of any crime: but such * * * conviction may be shown for the purpose of affecting his credibility." (Ill. Rev. Stat. 1957, chap. 38, par. 734.) And we must observe that earlier decisions of this court approved the admission of the record of out-of-State or Federal convictions for impeachment purposes, (*People* v. *Derrico*, 409 Ill. 453, 465,) and under the Habitual Criminal Act. *People* v. *Derrico*, 409 Ill. 453, 461 and 462; *People* v. *Hamlett*, 408 Ill. 171, 176, and *People* v. *Poppe*, 394 Ill. 216, 220 *et seq.*

The case of *People* v. *Montana*, 380 Ill. 596, is not pertinent, and *Hildreth* v. *Heath*, 1 Ill. App. 82, while in point, is not binding upon this court. Section 74 of the

Civil Practice Act, (Ill. Rev. Stat. 1957, chap. 110, par. 74,) deals with appellate practice and states that an appeal constitutes a continuation of the proceeding in the trial court, yet this does not preclude this court from determining that conviction of an infamous crime in a trial court effects a vacancy in office even though an appeal is taken from the judgment of conviction. We recognize that courts of other jurisdictions support the petitioner's position in this respect, (*People* v. *Enlow*, (Colo.) 310 P. 8d 539; *People ex rel. Attorney General* v. *Laska*, (Colo.) 72 P. 2d 693; *People* v. *Gutterson*, (N. Y.) 155 N. E. 113; *Bird* v. *Gilbert*, 40 Kan. 469,) but believe that the primary factors in our determination are the provisions of the Illinois constitution and related statutes.

While section 4 of article IV of the constitution of 1870 rendered ineligible to public office any person convicted of bribery, perjury or other infamous crime, section 31 of article III of the constitution of 1848 only provided that "The General Assembly shall have full power to exclude from the privilege of electing or being elected any person convicted of bribery, perjury or other infamous crime." Consideration of the historical background in connection with the expansion of the 1948 provision of section 31 of article III from power in the General Assembly to exclude from the privilege of electing or being elected any person convicted of bribery, perjury or other infamous crime, to the complete ineligibility of such person to hold public office under section 4 of article IV of the constitution of 1870, is both appropriate and enlightening. The debates of the constitutional convention, held in 1869 and 1870, aid in determining the intent of the drafters of that instrument. While in construing the constitution the true inquiry concerns the understanding of the meaning of its provisions by the voters who adopted it, still the practice of consulting the debates of the members of the convention which framed the constitution has long been indulged in by courts in determining the meaning of provisions which are thought to be doubtful. (*Burke* v. *Snively*, 208 Ill. 328; *Wolfson* v. *Avery*, 6 Ill. 2d 78.) Chief Justice Marshall in *Cohens* v. *Virginia*, 6 Wheat. 264, 5 L. ed. 257, 394, offered precedent for this technique in constitutional interpretation in these words: "In expounding them [the words of the Federal constitution], we may be permitted to take into view

those considerations to which courts have always allowed great weight in the exposition of laws. The framers of the constitution would naturally examine the state of things existing at the time; and their work sufficiently attests that they did so."

The debates reflect that the following resolution was offered and referred to the Committee on the Legislative Department:

> "Resolved, That the Constitution be so amended as to render ineligible to any office of honor, trust or profit, under the laws of this State, every person found guilty of embezzlement of public money or securities, or who shall be a defaulter thereto, or in regard to any money he may hold in his official capacity." (Debates of the Constitutional Convention, State of Illinois, 1870, vol. 1, p. 116.)

At pages 191 *et seq.* of Volume 1 of the Debates the report of the Committee on the Legislative Department is set forth. Section 32 thereof appears on page 292 and reads as follows:

> "Sec. 32. The General Assembly shall exclude from the privilege of being elected to either house, any person convicted of bribery, perjury or other infamous crime."

This report, in amended form, is shown at pages 393 and 394 of said Debates wherein section 32 remains unchanged. The proceedings before the convention, as a committee of the whole, pertaining to section 32 of this report, at page 572, reflect that Mr. Hanna, a member of the convention, in considering the purpose of this section, stated:

> "I would call upon the chairman of the committee that presented this report and that article, to tell us what he means by it. Why not let this Convention say that persons convicted of bribery, perjury, or any other infamous crime, shall not be eligible to a seat—or else strike out the whole thing? It means nothing as it now stands. As it reads now, we simply provide that the General Assembly shall pass a law prohibiting persons from occupying seats in the General Assembly who have been convicted of crime. Let this Convention do this, and then we shall know it has been done."

Mr. Allen, of Crawford County, another delegate, remarked:

"I would suggest to the gentleman that the question of whether a man is guilty of bribery, perjury, or other infamous crime, is one that has to be determined by the courts, and it will be the duty of the General Assembly to fix some rule by which they may determine whether that conviction has been had.

"Mr. Hanna. I do not see that that explanation makes it any plainer.

"The section, as it now stands, would require the Legislature to pass a law to declare that no man convicted of an infamous crime, shall be eligible to a seat in the Legislature. I say, if we are going to deal with this question, as I think we certainly ought, let us declare that no man convicted of an infamous offense, shall be eligible, and then, if the courts convict him, that settles the whole matter without the interposition of the Legislature.

"I will send up my amendment in a few moments. The difference between my honorable friend from Crawford (Mr. Allen) and myself, is, that he wants the Legislature to pass a law to exclude criminals, and I want this Convention to do so without calling upon the legislature."

After this discussion, the following amendment was offered:

"No person convicted of bribery, perjury or other infamous offense, shall be eligible to either house of the General Assembly."

At page 573 the following discussion, between various delegates pertaining to this subject is shown:

"Mr. Pillsbury. I think sir, the provision is a sweeping one. I would add to the substitute these words: 'Unless after such conviction his innocence shall be established.'

"Mr. Chairman. It frequently happens in our country that a man is convicted of crime and sent to the penitentiary, when subsequently his innocence is proved by evidence that cannot be controverted; yet

it is here proposed to make a conviction the reason for excluding a man from any office in the gift of the people, when he may be as innocent of crime as any gentleman in this hall.

"If conviction is the rule, then it makes no difference whether it is rightful or wrongful. He nevertheless, is rendered ineligible to any office. I am not willing, sir, that such should be the rule; for in many instances it would work absolute injustice.

"If it were left to the Legislature to say when and in what cases conviction should work ineligibility to office, it could provide for such a contingency. But here we establish an iron rule, which cannot be varied, and will bear as hardly upon the convicted innocent as the guilty.

"Mr. Cary. Mr. Chairman: The argument of the gentleman from Livingston (Mr. Pillsbury) has convinced me that the article as reported by the committee, is correct."

At page 574, the following discussion appears:

"Mr. Anthony. * * * The object is, as I understand, to keep scoundrels out of the Legislature. How do we keep a scoundrel out of the Legislature? We say that no scoundrel shall be eligible to the General Assembly. If a person has been convicted of bribery, perjury, or any infamous crime, I do not want to have it left to the General Assembly to be passed upon by them. The evidence that a man is infamous, is conviction. That is all there is about it. When a man has been tried and convicted of a crime, the evidence is by the record, and we have it whenever a man has been convicted."

The following proceedings appear at page 576:

"The Chairman. The question is upon the amendment of the gentleman from Livingston (Mr. Pillsbury).

"The clerk read the amendment offered by Mr. Pillsbury, as follows:

"'Unless, after such conviction, his innocence shall be established.'

"The amendment was not agreed to."

At page 959 the adoption of the 31st section of the report of the Committee on the Legislative Department is set forth:

> "The secretary read section thirty-one as follows:
>
> "'Sec. 31. No person who has been, or hereafter shall be, convicted of bribery, perjury or other infamous crime, shall be eligible to a seat in the General Assembly.' • • •
>
> "The President. The question is on the adoption of the thirty-first section, and it is declared adopted."

These sections, as adopted, were subsequently regrouped by the drafters of the constitution and other pertinent provisions, as similarly discussed and adopted, were combined to make up the final draft of the constitution which was likewise approved, and section 4 of article IV, as ultimately approved by the convention, voted on and adopted by the people, is heretofore set forth.

Advertising to the provisions of section 31 of article III of the constitution of 1848 which empowered the legislature to exclude from membership any person convicted of bribery, perjury, or other infamous crime, and the debates above set forth concerning section 4 of article IV of the constitution of 1870, it is evident that the drafters of the constitution intended that conviction of bribery, perjury, or other infamous crime should, *ipso facto*, render a person ineligible to hold any public office; and that the framers were referring to conviction in the trial court and not to an ultimate conviction following appeal to a higher court or courts.

This conclusion is further fortified by the provisions of section 7 of article VII of the constitution of 1870 which provides: "The general assembly shall pass laws excluding from the right of suffrage persons convicted of infamous crimes." Insofar as the right of suffrage is concerned, the framers of the constitution directed the legislature to pass laws excluding from such right the persons convicted of infamous crimes. This express mandate vested in the legislature the exclusive function of disqualifying from the right of suffrage persons convicted of infamous crimes and of declaring the specific crimes which shall be infamous for this purpose. Pursuant to this constitutional

direction, the legislature enacted section 7 of division II of the Criminal Code. However, in this paragraph it exceeded the constitutional mandate and defined infamous crimes with reference to disqualification not only from the right of suffrage, but also from serving as a juror, and holding any office of honor, trust or profit as well. While the legislature has implied authority to define infamous crimes for all purposes, (*Donahue* v. *County of Will*, 100 Ill. 94, 105, 106; *People ex rel. Iddings* v. *Dreher*, 302 Ill. 50, 56,) it certainly is not within its exclusive function to determine what is an infamous crime for the purpose of effecting a vacancy in office.

It is interesting to note that bribery is not enumerated as an infamous crime in section 7 of division II of the Criminal Code, even though section 4 of article IV of the constitution provides that no person who has been, or hereafter shall be convicted of bribery, perjury or other infamous crime shall be eligible to hold any office of honor, trust or profit in this State. If we give credence to petitioner's contention that the enumeration of infamous crimes within section 7 of the above statute excludes any crimes not therein listed, we then face the anomalous situation of the provisions of the statute taking precedence over those of the constitution. Since *Marbury* v. *Madison*, (1803) 1 Cranch 137, 2 L. ed. 60, courts have recognized that where the constitution and a statute are in conflict, the constitution prevails. The principle of *ejusdem generis* is not a rule of thumb, but rather is a rule of construction to aid in ascertaining legislative intent which will not be applied to defeat the evident purpose of a statute. (*Lamere* v. *City of Chicago*, 391 Ill. 552; *Gillock* v. *People*, 171 Ill. 307.) The primary object of construction of the constitution or of a statute is to ascertain and give effect to the intent of the framers. *Wolfson* v. *Avery*, 6 Ill. 2d 78; *People ex rel. McDavid* v. *Barrett*, 370 Ill. 478; *Petterson* v. *City of Naperville*, 9 Ill. 2d 233; *Belfield* v. *Coop*, 8 Ill. 2d 293.

While we held in *Christie* v. *People*, 206 Ill. 337, and in *People* v. *Russell*, 245 Ill. 268, cases not involving a vacancy in office by operation of law, that whether a crime is infamous in this State depends not upon the common law but upon the statute, we find that not only the constitutionally infamous crime of bribery, but other heinous

felonies such as abortion, abduction, sexual crimes against children, inducing females to enter houses of prostitution, poisoning, and receiving stolen property, are not declared infamous by section 7 of division II of the Criminal Code. (See *People* v. *Russell*, 245 Ill. 268, 278.) The statutory enumeration likewise fails to include treason, misprision of treason, espionage and other equally serious crimes, the infamy of which needs no citation of authority. Bribery involves moral turpitude and was an infamous crime at common law when the constitution was adopted in 1870. (*Christie* v. *People*, 206 Ill. 337.) And it is probable that the other heinous crimes above listed were likewise then so regarded. "An infamous crime at common law was an act, the commission of which was inconsistent with the commonly accepted principles of honesty and decency, or one which involves moral turpitude." (14 I. L. P., Crim. Law, chap. 2, sec. 22, p. 484.) Under these circumstances, we conclude that the determination of what constitutes an infamous crime, insofar as it effects a vacancy in office, is not an exclusive legislative function, but is subject to judicial decision in the light of the common law as it existed when the constitution was adopted in 1870. We therefore conclude that the cases of *Christie* v. *People* and *People* v. *Russell*, and other similar decisions, are not controlling of the case at bar.

In the case of *Briggs* v. *Board of County Commissioners*, (Okla.) 217 P. 2d 827, the Supreme Court of Oklahoma held that the indictment and conviction of the sheriff of Muskogee County, in the Federal court, of the offense of conspiring to operate and the operation of a wholesale liquor business in Oklahoma, without paying federal taxes thereon, was conviction of an infamous crime under the laws of Oklahoma, effecting a vacancy in that office by operation of the vacancy statute. Similar conclusions have been reached in a majority of the jurisdictions throughout the United States, a few of which are hereafter cited: *State* v. *Redman*, (Ind.) 109 N. E. 184; *Hogan* v. *Hartwell*, (Ala.) 7 So. 2d 889; *State ex rel. Anderson* v. *Fousek*, (Mont.) 8 P. 2d 791; *State ex rel. McElliott* v. *Fousek*, (Mont.) 8 P. 2d 795; *Davis* v. *Impelliteri*, 94 N. Y. S. 2d 159; *State* v. *Langer*, (N. D.) 256 N. W. 377; *State ex rel. Salisbury* v. *Vogel*, (N. D.) 256 N. W. 404; *State ex rel. Barrett* v. *Sartorious*, (Mo.) 175 S. W. 2d 787; *Arnett* v.

Stumbo (Ky.) 153 S. W. 2d 889; *Jordan* v. *De George*, 341 U. S. 223, 95 L. ed. 886; Anno. 20 A. L. R. 2d 732.

In the case of *In re Needham*, 364 Ill. 65, this court held that the use of the United States mails to defraud in violation of section 338 of title 18 of the United States Code was a crime involving moral turpitude and that respondent's conviction thereunder warranted his disbarment. The United States Supreme Court in *Jordan* v. *De George*, 341 U. S. 223, 95 L. ed. 886, held that conspiring to defraud the United States of taxes on distilled spirits was a crime involving moral turpitude. In *Christie* v. *People*, 206 Ill. 337, the defendant was indicted under section 83 of the Election Act of 1872, as amended in 1887, for bribery at an election and was convicted. Such offense was not included in the statute which then enumerated infamous crimes. If the crime was infamous, the sentence was valid under section 7 of article VII of the constitution. At page 341, the court stated: "The offense of bribery in elections involves moral turpitude and falls within the class of crimes deemed infamous, and in both the constitution of 1948 and that of 1870 bribery was so classed by the people. In both instruments bribery of all kinds, which included bribery in elections, was classed with perjury as rendering the offender infamous, one showing him to be insensible to the obligations of an oath, and the other proving him alike insensible to the obligations and duties of a citizen and unfit to exercise the elective franchise. We do not see how it can be said that the framers of the constitution, or the people, did not intend that bribery in elections should be included as an infamous crime, within the meaning of section 7."

Accordingly, we conclude that any public officer convicted, in the Federal court or in the court of any sister State, of a felony which falls within the general classification of being inconsistent with commonly accepted principles of honesty and decency, or which involves moral turpitude, stands convicted of an infamous crime under the common law as interpreted when our constitution was adopted in 1870, and that such conviction creates a vacancy in such office. This determination is not inconsistent with the legislative policy expressed in section 29—26 of the Election Code which provides that "If any person who shall have been convicted of bribery, felony or other infamous

crime under the laws of *any state* • • • shall thereafter vote or offer to vote at any election or primary he shall upon the conviction thereof be adjudged guilty of a felony, and, for each and every such offense shall be punished by imprisonment in the penitentiary for not less than two nor more than five years." (Italics ours.) We are also of the opinion that section 7 of division II of the Criminal Code is not the sole repository of infamy legislation in Illinois. *Christie* v. *People*, 206 Ill. 337; Ill. Rev. Stat. 1957, chap. 46, pars. 3—5; 25—2, 29—26, and 29—38; Official Comments of Drafting Commission, article 29, Election Code, (chap. 46,) Ill. Ann. Stat. pages 644 *et seq.*

Petitioner also urges that the common law of England prior to 1606 is the rule of decision; (Ill. Rev. Stat. 1957, chap. 28, par. 1,) that the crime of income tax evasion was unknown to the common law of England, and hence, it is inapplicable; and that if applicable, the legislature discarded such concept by the enactment of section 7 of division II of the Criminal Code. Such contention entirely disregards the provisions of section 25—2 of the Election Code and misconceives the effect of the act adopting the common law, above cited. This court adequately considered the scope and effect of the rule of decision in *Amann* v. *Faidy*, 415 Ill. 422, and at pages 433 and 434 stated: "What the statute adopted was not just those precedents which happened to have already been announced by English courts at the close of the sixteenth century, but rather a system of law whose outstanding characteristic is its adaptability and capacity for growth. The common law which the statute adopted 'is a system of elementary rules and of general judicial declarations of principles, which are continually expanding with the progress of society, adapting themselves to the gradual changes of trade, commerce, arts, inventions and the exigencies and usages of the country.' *Kreitz* v. *Behrensmeyer*, 149 Ill. 496." While we recognize that at common law there was no such offense as income tax evasion, yet we are not concerned with the nomenclature of the offense, but rather with its characteristics. The glory of the common law is, and has been, its capacity for growth and development to meet the needs of society. For the purpose of effecting a vacancy in office, we hold a felony to be infamous within the concept of the common law, if it is inconsistent with commonly accepted

principles of honesty and decency, or involves moral turpitude. We find that the crime of which the petitioner stands convicted was federally denominated as felonious and infamous and that it falls within this classification.

Under the constitutions and statutes of sister States creating a vacancy in public office where the incumbent has been convicted of a felony, it is generally held that the office is vacated upon a verdict of guilty and that an appeal does not stay the effect of such vacancy. These decisions are generally predicated upon the theory that after a plea or verdict of guilty, judgment, and sentence by a court of competent jurisdiction, the presumption of innocence which, up to that time, had persisted in favor of the defendant, no longer prevails, and that the law thereafter presumes that the proceedings have been regular and that the defendant is guilty. *Briggs* v. *Board of County Commissioners*, (Okla.) 217 P. 2d 827; *State ex rel. Hunter* v. *Jurgensen*, (Neb.) 280 N. W. 886; *Attorney General ex rel. O'Hara* v. *Montgomery*, (Mich.) 267 N. W. 550; *State ex rel. Olson* v. *Langer*, (N. D.) 256 N. W. 377; *Bell* v. *Treas. of Cambridge*, (Mass.) 38 N. E. 2d 660; *McKanney* v. *Horton*, (Cal.) 91 Pac. 598; *In re Obergfell*, (N. Y.) 145 N. E. 323; *State* v. *Chapman*, (Wash.) 60 P. 2d. 245; *State* v. *Levi*, (W. Va.) 153 S. E. 587; *Becker* v. *Green County*, (Wis.) 184 N. W. 715, 186 N. W. 584; 43 Am. Jur. sec. 200, p. 44.

Respect for the law and confidence in public officers cannot be compelled. These attributes stand as a voluntary tribute to just laws and integrity in public office. While they exist, both the law and the official will retain public trust. Confidence in an elective official is destroyed when he is convicted of an infamous crime. In the instant case, if the petitioner had been unable to give bond and the penitentiary sentence had been executed, there could be no doubt concerning the vacancy in his office. His ability to give bond cannot alter the public reaction to his conviction. While neither the constitution nor the statutes effecting its purpose define the term "conviction," yet respect for the law and deference to the transcendent trust placed in public officials requires that such officer forfeit his office after the presumption of his innocence is dispelled by conviction of an infamous crime in a trial court. We conclude that the provisions of the Illinois constitution and statutes ef-

fecting a vacancy in public office upon the conviction of the incumbent of an infamous crime refer to the conviction in a trial court. The Debates of the Constitutional Convention, heretofore quoted, and particularly the discussion appearing at pages 573 and 574 thereof, also sustain our view.

We find no merit in petitioner's contention that pendency of his appeal stays the finality of his conviction and thereby holds in abeyance a vacancy in the office of Cook County assessor.

Under the conclusions of this court, the petitioner has failed to establish any right to the writ of *mandamus* herein prayed. The writ is therefore denied.

Writ denied.

APPENDIX B.

CONSTITUTION OF THE UNITED STATES.

ARTICLE I, SECTION 9

"No Bill of Attainder or *ex post facto* Law shall be passed."

ARTICLE VI

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

AMENDMENT V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be

compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT XIV SECTION 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws."

CONSTITUTION OF ILLINOIS

ARTICLE III

"The powers of the government of this state are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted."

ARTICLE IV SECTION 4

"No person who has been, or hereafter shall be, convicted of bribery, perjury, or other infamous crime, nor any person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the general assembly, or to any office of profit or trust in this state."

ARTICLE VI SECTION 30

"The general assembly may, for cause entered on the journals, upon due notice and opportunity of defense, remove from office any judge, upon concurrence of three-fourths of all the members elected, of each house. All other officers in this article mentioned shall

be removed from office on prosecution and final conviction for misdemeanor in office."

ARTICLE VII SECTION 7

"The general assembly shall pass laws excluding from the right of suffrage persons convicted of infamous crimes."

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CHAPTER 38.

PAR. 585. FELONY.

"A felony is an offense punishable with death or by imprisonment in the penitentiary."

PAR. 586. MISDEMEANOR.

"Every other offense is a misdemeanor. Where the performance of an act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor, and may be punished by fine not exceeding $100, or imprisonment in the county jail not exceeding six months, or both, in the discretion of the court."

PAR. 587. INFAMOUS CRIMES.

"Every person convicted of the crime of murder, rape, kidnapping, willful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sale of narcotic drugs, sodomy, or other crime against nature, incest, forgery, counterfeiting, bigamy, or larceny, if the punishment for said larceny is by imprisonment in the penitentiary, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust or profit, of voting at any election, or serving as a juror, unless he or she is again restored to such rights by the terms of a pardon for the offense or otherwise according to the law. As amended by act approved July 15, 1953. L. 1953, p. 1529."

CHAPTER 46, ARTICLE 25, SECTION 2

"Every elective office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

Fifth—His conviction of an infamous crime, or of any offense involving a violation of official oath."

CHAPTER 120, PAR. 552.

"In all cases where deductions are claimed from credits, the assessor shall require that such deductions be verified by the oath of the person, officer or agent claiming the same; and any such person, officer or agent, knowingly or willfully making a fraudulent statement of such deductions claimed, so verified by affidavit, shall be liable to a fine of not less than $100, nor more than $1,000, in addition to all damages sustained by the State, county or other local corporation, to be recovered in any proper form of action in any court of competent jurisdiction, in the name of the People of the State of Illinois. Such fines, when recovered, shall be paid into the county treasury, and the damages, when collected, shall be paid to whom they belong. The assessor shall preserve the statement of deductions thus claimed, so verified by affidavit, and when he returns the assessment books shall file the same with the county clerk, to be kept on file in his office for two years, and at the expiration of such time said statement of deductions shall be destroyed by said clerk, but, in the meantime, shall be subject only to the inspection of the officers charged with the execution of this law."

PAR. 806.

"Whoever, with intent to defeat or evade the law in relation to the assessment of property; delivers or discloses to any assessor or deputy assessor a false or fraudulent list, return or schedule of his property not exempted by law from taxation, shall be punished by fine not exceeding five thousand dollars ($5,000), or imprisonment in the county jail not exceeding one year, or both in the discretion of the court."